

MONTANA LEGISLATIVE HISTORY

Chapter 301 19 75

Bill H _____ S 186 Original bill & history C

H. Committee on Taxation

Hearing Date(s) Mar 15 ☒ C

Mar 19 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 19 ☒ C

S. Committee on Taxation

Hearing Date(s) Feb 13 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Feb 13 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 *Senator* BILL NO. *186*
2 INTRODUCED BY *Ronny Ferguson*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
5 84-7012, R.C.M. 1947, TO PROVIDE FOR PENALTY, INTEREST AND
6 TAX LIENS FOR FAILURE TO FILE A STATEMENT UNDER THE
7 PROVISIONS OF THE MONTANA RESOURCE INDEMNITY TRUST ACT;
8 PROVIDING THAT THE ATTORNEY GENERAL ENFORCE THE TAX
9 COLLECTION PROVISIONS; AND PROVIDING AN EFFECTIVE DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 84-7012, R.C.M. 1947, is amended to
13 read as follows:

14 "84-7012. Procedure in case of failure to file
15 statement -- penalty -- interest -- tax lien. (1) If any
16 person shall fail, refuse or neglect to make and file a
17 statement and return within the time prescribed, the
18 department shall, immediately after such time has expired,
19 ascertain and determine as nearly as may be possible from
20 any returns or reports filed with the state or from any
21 other information which the department may be able to
22 obtain, the total gross value of product of such person from
23 such business during the calendar year immediately preceding
24 the year in which the tax is to be paid, and ~~shall make and~~
25 ~~file a statement showing the amount of such gross value of~~

1 ~~product--and--shall--ascertain--and--determine--and--compute--and~~
2 ~~assess--the--amount--of--the--tax--due--from--and--to--be--paid--by~~
3 ~~such--person.~~ and shall determine and fix the amount of the
4 tax due to the state from such person for such calendar year
5 and shall add to the amount of such tax a penalty of ten
6 percent (10%) thereof plus interest at the rate of one
7 percent (1%) per month or fraction thereof computed on the
8 total amount of tax and penalty. Interest shall be computed
9 from the date the tax was due to the date of payment.

10 (2) The state department of revenue shall mail to the
11 person required to file an annual statement and pay any tax,
12 a letter setting forth the amount of tax, penalty, and
13 interest due and may file a copy of such letter in the
14 office of the county clerk and recorder of the county in
15 which the mineral was produced.

16 (3) The attorney general shall commence and prosecute
17 to final determination in any court of competent
18 jurisdiction, an action at law to collect the tax penalty
19 and interest due.

20 (4) The ten percent (10%) penalty herein provided may
21 be waived by the state department of revenue if reasonable
22 cause for the failure and neglect to file the statement
23 required by section 84-7005 is provided to the department.

24 (5) The tax assessed against any person under this
25 act, together with penalties and interest thereon, shall be

1 a lien upon any and all property owned by such person within
2 this state, which lien shall attach on the date the state
3 department of revenue mails a letter assessing tax, penalty,
4 and interest and such lien may be enforced in the name of
5 the state of Montana in the same manner as other liens are
6 enforced at law."

7 Section 2. This act is effective on passage and
8 approval.

-End-

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 13, 1975

The twenty-first meeting of the Taxation Committee was called to order on the above date by Chairman Watt in Room 415 of the State Capitol Building at 8:10 a.m.

ROLL CALL: Roll call found all members present.

The following witnesses were present:

William L. Romine	Mont. Mining Assoc.
Jack Williams	Mont. Chiefs Assoc.
Maurice A. Maffei	Self
Ron Green	Mont. Peace Officers Assoc.
James Madison	Dept. of Revenue
Larry Lewis	"

CONSIDERATION OF SENATE BILL 186: Sen. Romney presented his bill which he said was to include a penalty for failure to file tax statements. Mr. Madison continued the testimony, further explaining the bill, and said he felt it was a necessity.

Chairman Watt asked for other proponents or opponents to the bill and Mr. Romine next spoke, also presenting written testimony, copy attached, Exh. #1.

The chairman then asked for additional testimony and their being none, permitted questions from the committee. They questioned the fact that the attorney general takes the action rather than the department of revenue.

Hearing was concluded on this bill following discussion.

CONSIDERATION OF SENATE BILLS 180, 214: Sen. Lynch presented these bills and said both were related to SB348. He said the bill would put a statute of limitations on debts to the state and would permit county treasurers to destroy old record books when they have reached statute of limitations.

Following his testimony Mr. Maffei spoke and illustrated how the many volumes of record books accumulate in county buildings and thought it was unnecessary that all of these old books be kept, when their usefulness is over.

Mr. Lewis spoke briefly also and said the Department of Revenue would have no objection if amendment were made to SB180.

Sen. Lynch concluded his testimony and following, the chairman opened the meeting for first, additional testimony and there being none, for questions by the committee.

The following discussion included mention of the books for historical value, and also question on procedure to collect delinquent taxes dated back to time before statute of li-

Feb. 13, 1975

for which he was chief sponsor. He said the bill was identical to one previously passed for retired firemen and presented Mr. Harrison who was also a proponent and asked the committee to include retired policemen's benefits to be exempted. Mr. Williams also spoke in favor of the bill.

Vice chairman Healy asked for other proponents or opponents to the bill and there being none, opened the meeting for questions. Discussion included effective date to simplify bookkeeping procedures. Hearing on SB305 was closed.

DISPOSITION:

Sen. Turnage Moved that SB263 Be Held to allow the committee further time to consider the bill. It was brought out that Sen. Etchart, chief sponsor of the bill, would like to study the amendments recommended by the committee.

Sen. Towe Moved to Adopt Amendments #1, 2 to SB298; motion carried unanimously.

Sen. Towe then Moved to Adopt Amendments #3, 4 to SB298; motion carried unanimously.

Sen. Towe MOVED SB298 DO PASS AS AMENDED; motion carried. A roll call vote was taken with results 5-2. It was noted for the record that "No" votes were cast by Sens. Norman and Turnage.

Sen. Turnage proposed 4 amendments to SB186, which the committee agreed upon.

Sen. Turnage Moved to Adopt the Amendments to SB186; motion carried unanimously.

Sen. Turnage MOVED SB186 DO PASS AS AMENDED; motion carried unanimously.

Sen. Turnage proposed a number of amendments to SB180 and following discussion, the amendments were accepted.

Sen. Turnage Moved to Adopt Amendments to SB180; motion carried unanimously.

Sen. Turnage MOVED SB180 DO PASS AS AMENDED; motion carried unanimously.

There followed brief discussion on SB214 and Sen. Turnage MOVED SB214 DO NOT PASS. Motion carried unanimously.

Sen. Turnage then made several amendments to SB305 and Moved to Adopt Amendments to SB305; motion carried unanimously.

Sen. Watt MOVED SB305 DO PASS AS AMENDED. The motion was seconded by Sen. Healy and motion was carried unanimously.

CONSIDERATION OF SENATE BILL 104: Sen. Turnage introduced this bill and mentioned an example of a situation having arisen

ROLL CALL

TAXATION

COMMITTEE

44th LEGISLATIVE SESSION - - 1975

Date 2/13

[illegible]

Mr. Chairman and members of the committee, my name is William L. Romine, and I represent the Montana Mining Association.

We oppose Senate Bill 186 in its present form. To begin with, we feel that the bill should be amended in such a way that the penalty is not applied until after the miner has been given notice that the tax is due and unpaid, and after he has been given a reasonable time within which to pay the unpaid tax and interest. If he then continues to refuse payment, the penalty should be imposed.

Although it is true this bill does allow the Department of Revenue to waive the penalty, we feel that the approach should be from the opposite end. We feel that the penalty should be applied only if there is shown that the miner is refusing to pay the tax. ~~As the bill is now written, there is a great deal of discretion given to the Department in interpreting subsection 4 on page 2, lines 20 through 23. It would be much preferable if the penalty was used solely as a means to enforce payment after the miner has been made aware that the tax is due and unpaid.~~

... is fairly excessive, and we would recommend

and interest. If he then continues to refuse payment, the penalty,

Although it is true this bill does allow the Department of Revenue to waive the penalty, we feel that the approach should be from the opposite end. We feel that the penalty should be applied only if there is shown that the miner is refusing to pay the tax. As the bill is now written, there is a great deal of discretion given to the Department in interpreting subsection 4 on page 2, lines 20 through 23. It would be much preferable if the penalty was used solely as a means to enforce payment after the miner has been made aware that the tax is due and unpaid.

Secondly, a 10% penalty seems fairly excessive, and we would recommend that the penalty provision be at 5% rather than 10%. This would be somewhat similar to the income tax laws, which provide the penalty of 5% if you failed to file a return.

Finally, the provision concerning the Attorney General bringing an action to collect the tax should be rewritten to provide some time limitation. As the bill now reads, it would appear that the Attorney General would be required to file the action

immediately upon the department determining the tax was due. A provision should be included which would direct the Attorney General to bring the action after a certain period of time has lapsed from and after the date when the department gives notice to the miner to pay the tax.

☒ DO PASS AS AMENDED

☐ DO NOT PASS

☐ BE CONCURRED IN

☐ BE NOT CONCURRED IN

☐ BE ADOPTED

☐ BE NOT ADOPTED

☐ BE HELD OVER

STANDING COMMITTEE REPORT

February 13 19 75

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration SENATE Bill No. 186

Respectfully report as follows: That SENATE Bill No. 186,

be amended as follows:

1. Amend title, line 9.

Following: "THAT THE"

Strike: "ATTORNEY GENERAL"

Respectfully report as follows: That..... Bill No.....

be amended as follows:

1. Amend title, line 8.
Following: "THAT THE"
Strike: "ATTORNEY GENERAL"
Insert: "department of revenue"
2. Amend title, line 9.
Following: "PROVISIONS"
Strike: "; AND PROVIDING AN EFFECTIVE DATE"
3. Amend page 2, section 1, line 10.
Following: "The"
Strike: "attorney general"
Insert: "department of revenue"
4. Amend page 3, section 2, lines 7, 8.
Strike: Section 2 in its entirety

AND AS SO AMENDED, DO PASS

~~DO PASS~~
DO PASS

ROBERT T. TAYLOR

Chairman

TAXATION COMMITTEE

March 15, 1975

Chairman Dan Yardley called the meeting to order at 8:10 a.m. in room #108, Capitol Building, Helena. All members were present with the exception of Reps. Esther Bengtson, Harrison Fagg, Daniel Kemmis, and Bill Thomas who were excused. Senate Bills 186, 244, and 165 were scheduled to be heard.

SENATE BILL Senator Miles Romney, District 46, Ravalli County, explained Senate Bill 186 has the approval of the department of revenue and he is carrying this bill for them.

186 Mr. Robert S. McGee, department of revenue, said SB 186 was largely due to the fact that the penalty and interest clause was left out of the bill when drafted in the 1973 session. SB 186 provides for filing of a lien in addition to penalty and interest and gives the department permission to waive penalty when reasonable cause is shown. New language allows them to determine and fix amount of tax and penalty due from any available source that they may have from any preceding year. The tax can be estimated and a statement mailed for tax due.

There were no opponents.

Rep. Fabrega thought 1% per month interest rate was usurious when a 10% limit has been held. Sen. Romney said there are a number of bills of similar character changing the penalty and interest rate and the department is trying to get them all in the same category in this field and they are all directed to that end. There are different interest rates floating around and it is not settled as yet. There are 27 different forms of taxation and the department of revenue is attempting to standardize all of them so that all will have the same penalty and interest.

Senator V. E. Cetrone, District 33, Yellowstone County, stated that SB 165 is a simple little tax-cut bill that should

Hearing adjourned at 8:25 a.m., and committee went into executive session.

SENATE BILL 104 - Rep. W. Jay Fabrega moved that SB 104 BE CONCURRED IN. Motion carried unanimously. Fabrega will carry.

SENATE BILL 179 - Rep. J. Melvin Williams moved that SB 179 BE CONCURRED IN. Motion carried unanimously. Williams carries.

SENATE BILL 96 - Rep. Williams moved that SB 96 BE CONCURRED IN. Motion carried unanimously. Williams will carry.

SENATE BILL 370 - Rep. Daniel Kemmis moved that SB 370 be reconsidered. Motion carried unanimously. Rep. Kemmis moved that the bill be amended in the third reading copy as follows: Amend page 9, section 3, line 9, following "showing", insert "the length or amount of". Motion carried unanimously. Rep. Kemmis moved that SB 370 AS SO AMENDED BE CONCURRED IN. Motion carried unanimously. Rep. Kemmis will carry on floor.

SENATE BILL 186 - Rep. Harrison Fagg moved that SB 186 BE CONCURRED IN. Motion carried with Reps. W. Jay Fabrega, Tom Hager voting No. Rep. Fagg will carry.

SENATE BILL 208 - Rep. Ora J. Halvorson moved that SB 208 BE CONCURRED IN. Motion carried unanimously. Either Rep. Lien or Rep. Aageson will carry.

Senate Bill 230 - Rep. Tom Hager moved that it be not concurred in. Rep. Kemmis made a substitute motion that SB 230 be concurred in. Motions were withdrawn for further consideration.

Senate Bill 298 - Rep. W. Jay Fabrega moved that it be not concurred in. Rep. Fagg made a substitute motion that this bill be postponed until next week. Rep. Fagg's bill H3 672 is similar. Substitute motion carried with Reps. Williams, Bengtson, Anderson, Kemmis, Yardley, Fagg voting for postponement, and Reps. Fabrega, Hager and Halvorson voting NO.

SENATE BILL 305 - Rep. Daniel Kemmis moved that SB 305 BE CONCURRED IN. Motion carried with Rep. Dan Yardley abstaining.

SENATE BILL NO. 186

INTRODUCED BY ROMNEY, JERGESON

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 84-7012, R.C.M. 1947, TO PROVIDE FOR PENALTY, INTEREST AND TAX LIENS FOR FAILURE TO FILE A STATEMENT UNDER THE PROVISIONS OF THE MONTANA RESOURCE INDEMNITY TRUST ACT, PROVIDING THAT THE ATTORNEY GENERAL DEPARTMENT OF REVENUE ENFORCE THE TAX COLLECTION PROVISIONS, AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 84-7012, R.C.M. 1947, is amended to read as follows:

"84-7012. Procedure in case of failure to file statement -- penalty -- interest -- tax lien. (1) If any person shall fail, refuse or neglect to make and file a statement and return within the time prescribed, the department shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, and shall make and

file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the tax due from and to be paid by such person and shall determine and fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of ten percent (10%) thereof plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(2) The state department of revenue shall mail to the person required to file an annual statement and pay any tax, a letter setting forth the amount of tax, penalty, and interest due and may file a copy of such letter in the office of the county clerk and recorder of the county in which the mineral was produced. UPON RECEIPT OF THIS LETTER THE PERSON SHALL REMIT TO THE DEPARTMENT THE FULL AMOUNT OF LICENSE TAX, PENALTY AND INTEREST DUE WITHIN FIFTEEN (15) DAYS.

(3) The attorney general DEPARTMENT OF REVENUE shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax penalty and interest due.

(4) (3) The ten percent (10%) penalty herein provided may be waived by the state department of revenue if

REFERENCE BILL

1 reasonable cause for the failure and neglect to file the
 2 statement required by section 84-7005 is provided to the
 3 department.

4 ~~(5)--~~(4) The tax assessed against any person under
 5 this act, together with penalties and interest thereon,
 6 shall be a lien upon any and all property owned by such
 7 person within this state, which lien shall attach on the
 8 date the state department of revenue mails--a--letter
 9 assessing-tax, penalty, and interest and such--lien--may--be
 10 enforced--in--the--name--of--the--state--of--Montana--in--the--same
 11 manner--as--other--liens--are--enforced--at--law FILES A DUPLICATE
 12 OF THE STATEMENT SO MADE BY THE DEPARTMENT, OR A CERTIFIED
 13 COPY OF ANY STATEMENT FILED BY THE DEPARTMENT IN THE OFFICE
 14 OF THE COUNTY CLERK IN THE COUNTY WHERE SUCH PROPERTY IS
 15 SITUATED WHICH LIEN SHALL HAVE PRECEDENCE OVER ANY OTHER
 16 CLAIM, LIEN OR DEMAND THEREAFTER FILED AND RECORDED AND
 17 WHICH MAY BE ENFORCED IN THE NAME OF THE STATE OF MONTANA IN
 18 THE SAME MANNER AS JUDGMENT LIENS ARE ENFORCED BY LAW."

19 Section-2,--This--act--is--effective--on--passage---and
 20 approval.

-End-